

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations**

[Notice published July 28, 2000]

**NOTICE OF PROPOSED RULEMAKING**

**Tahoe Exemption Extension, 2000**

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Board proposes to amend the following existing section of Title 14 of the California Code of Regulations (14 CCR):

§ 1038(f)(15)                      Exemption

**PUBLIC HEARING**

The Board will hold a public hearing starting at 1:00 p.m. on Tuesday, September 12, 2000. The hearing will be held in the Resources Auditorium, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m. on Monday, September 11, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

**All written comments shall be submitted to the following address:**

Board of Forestry and Fire Protection  
Attn: Dennis O. Hall  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

**Written comments can also be hand delivered to the contact person listed in this notice at the following address:**

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

**Comments may be faxed to the Board's office using the following number:**

(916) 653-0989

## **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) § 4551 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4513, 4516, 4551.5, 4552, 4553, 4562.5, 4562.7, and 4584 of the Public Resources Code.

## **INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) established the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources furnish recreational opportunities and aesthetic enjoyment, while providing watershed protection. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and recreational opportunities alike (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to recreation, watershed, wildlife, fisheries, regional economic vitality, employment, and aesthetic enjoyment (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect soil, air, fish and wildlife, and water resources, including but not limited to streams and lakes.

In November of 1995, the Board adopted regulations to address conditions that developed as a result of the prolonged drought that preceded the winter of 1994/95. The drought contributed to increased levels of forest insects and disease and caused severe tree mortality in the Lake Tahoe Basin. This created conditions that could have resulted in a catastrophic fire and subsequent flooding, soil erosion, and significant impacts to other vital resources in the area. At that time, the Board desired to give landowners greater flexibility to remove insect and disease damaged timber while the drought effects still linger. The existing exemption regulations under 14 CCR § 1038(b) regarding the percent volume limit for removal of dead and dying trees could have hindered hazard reduction in the Lake Tahoe Basin. The greatest potential impact identified at that time was to water quality. Lake Tahoe is recognized by the federal government as an Outstanding National Resource Water. As such, no permanent or long-term reduction in water quality is allowed. Unless properly mitigated, logging activities could have potentially degraded water quality in the lake or its tributaries.

The regulations adopted by the Board in 1995 were part of a strengthened effort by a number of agencies to reduce fuel hazard in the Tahoe Basin. The rules that existed prior to that decision (especially 14 CCR § 1038) were viewed as a disincentive to landowners removing dead and dying trees by requiring the expense and time for preparation and review of a timber harvest plan for volumes of dead and dying trees in excess of 10 percent. In adopting the new rules in 1995, the Board established specific criteria for the exemption for harvesting dead and dying trees within the affected area and established a "sunset" for the regulation, which would allow the regulating agencies to continue to monitor the effects of the drought and the critical conditions related to tree mortality in the Lake Tahoe Basin consistent with policies of the Tahoe Regional Planning Agency (TRPA). At that time, a period of five (5) years was deemed appropriate to treat the lingering effects of the drought.

Since 1995, the various agencies and groups working to maintain and enhance the health of the forest in the Lake Tahoe Basin for the protection of the beneficial uses of water and other resources in the area (i.e. CDF, TRPA, and the Forest Health Consensus Group (FHCG)) have been monitoring the conditions related to forest health. At a recent meeting of the Board of Forestry and Fire Protection, a CDF representative reported to the Board that the Lake Tahoe Basin remains affected by increased levels of forest insects and disease and severe tree mortality. Conditions similar to those that led the Board to adopt special rules in 1995 continue to be of concern in the area. The Department therefore requested that the Board extend the effective period of the rules under 14 CCR § 1038(f) for a period of two (2) years. This rulemaking action proposes to extend the effective date of those regulations until December 31, 2002.

#### **14 CCR § 1038(f)(15)**

#### **Exemption**

Pursuant to 14 CCR § 1038(f), persons who conduct timber operations for the removal of dead or dying trees on parcels of 20 acres or less in size within the Lake Tahoe Basin, that are not part of a larger parcel of land in the same ownership, are currently exempt from the plan preparation and submission requirements (PRC 4581) and from the

completion report and stocking report requirements (PRC 4585 and 4587) of the Forest Practice Act. However, the regulations under this section of the Forest Practice Rules will expire January 1, 2001. The Board proposes to extend the specific period of time that the regulations would be effective. This change is presented under subsection (f)(15). The Board proposes to extend the effective period of the rules to December 31, 2002.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: None are known.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- The proposed Rules do not conflict with, or duplicate Federal regulations.

#### **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

## **PLAIN ENGLISH DETERMINATION AND OVERVIEW**

### *Small Business Determination*

The Board has determined that the proposed regulations may affect small businesses.

### *Plain English Policy Overview*

The Z'berg-Nejedly Forest Practice Act of 1973 established the legislature's intent to consider the public's need for long-term watershed protection and recognized that forest resources furnish recreational opportunities and aesthetic enjoyment, while providing watershed protection. It directed the State Board of Forestry and Fire Protection to adopt Rules to control unreasonable effects on forest resources including the beneficial uses of the State's waters. In November of 1995, the Board adopted changes to the Forest Practice Rules to address critical conditions that had developed in the Lake Tahoe Basin as a result of drought conditions. These conditions had contributed to increased levels of forest insects and disease and caused severe tree mortality in the Lake Tahoe Basin, and could have resulted in a catastrophic fire and subsequent flooding, soil erosion, and significant impacts to other vital resources in the area. The Board adopted rules to give landowners greater flexibility to remove insect and disease damaged timber.

In adopting the new rules in 1995, the Board established specific criteria for the exemption for harvesting dead and dying trees within the affected area and established a "sunset" for the regulation, which would allow the regulating agencies to continue to monitor the effects of the drought and the critical conditions related to tree mortality in the Lake Tahoe Basin. At that time, a period of five (5) years was deemed appropriate to treat the lingering effects of the drought.

Recently, a CDF representative reported to the Board that the Lake Tahoe Basin remains affected by increased levels of forest insects and disease and severe tree mortality. The Department requested that the Board extend the effective period of the rules under 14 CCR § 1038(f) for a period of two (2) years. This rulemaking action proposes to extend the effective date of those regulations until December 31, 2002.

### *Availability of the Text in Plain English*

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). The Board has attempted to draft the regulations in plain English whenever possible and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the *Informative Digest/Plain English Overview* for this notice and any future

notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact businesses. However, the Board has not identified any equally effective alternatives that would lessen any adverse impact on businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

## **CONTACT PERSON**

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection  
Attn: Dennis O. Hall  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418 or,  
(916) 653-8007  
Fax: (916) 653-0989

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

**[http://www.fire.ca.gov/bof/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html)**.

In order to clearly indicate those sections proposed for change in this 45-Day Notice, the text is presented in the following format:

- The specific rule language proposed to be amended under this rulemaking action is shown double-spaced.
- Single-spacing represents the full rule text as it currently exists under the Forest Practice Rules. This is provided for reference and readability only.
- All other text is existing rule language.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. As of this date, this notice is published in the *Notice Register*.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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Dennis O. Hall  
Regulations Coordinator  
Board of Forestry and Fire Protection

doh: 07/07/2000  
File: 45 Day Notice